

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 750 of 2014

Plaintiff : Muhammad Rafiq, through Ms. Arjumand Khan, Advocate.

Defendant No.2 : Muhammad Dawood, through Mr. Ch. Atif Rafique, Advocate.

Defendant No.4 : Noman Abid, through Mr. Sajid Latif, Advocate.

Defendants : Abdul Ghafoor Bhutto and others,
Nos. 5 to 7 through Mr. Rafiq Ahmed Kalwar, Advocate.

Dates of hearing : 07.08.19, 21.08.19 and 25.09.19.

ORDER

YOUSUF ALI SAYEED, J – The Suit has been filed for Declaration as to the dissolution of a partnership carried on under the name of M/s. ARD Developers, which has been arrayed as the Defendant No.1, as well as for Rendition of Accounts, Permanent Injunction, Recovery and Damages, with the Defendant No.1 being defined in the Plaint for purpose of further reference as the “**Firm**”, and it being sought in terms of CMA No. 6125/2014 filed under Order 39 Rules 1 and 2 CPC, that the Defendants be restrained from alienating encumbering or disposing of land measuring 130-18-52.37 (Ac-Gh-Yds) out of 163-3 (Ac-Gh) said to belong to the Firm, with an ad-interim having been made on 08.05.2014, extending interim relief as prayed. It is this Application as well as CMA Number 7924/18 alleging contempt on the part of the Defendants Nos. 5 to 7 and CMA Number 15418/2018 filed on behalf of those Defendants under Order 1, Rule 10(2) CPC, seeking their deletion, which presently arise for consideration.

2. The case set up by the Plaintiff is that he and the Defendants Nos.2 and 3 were all partners of the Firm, constituted in terms of a registered Partnership Deed dated 11.10.2006 (the “**Deed**”), which envisages an 18% share of the Plaintiff in the profit and loss thereof.

3. Apparently a total of 81 acres of land was purchased for the benefit of the Firm vide separate transactions, of which 32-24-72 (Acres-Ghuntas-Square Yards) bearing Survey No.84, 99, 101, 102, 103, 104, 105, 106, 107, 108 and 111 situated in Deh Nagan Songal, Gadap Town, Karachi was purchased vide registered Conveyance Deed dated 17.11.2006; and a 48-15-49 (Acres-Ghuntas-Square Yards) bearing Survey No.84, 98, 99, 101, 102, 103, 104, 105, 106, 107, 108 and 111 situated in Deh Nagan Tapo Songal, Gadap Town, Karachi was purchased vide registered Conveyance Deed dated 21.03.2007.

4. Thereafter, in the year 2008, the Firm entered into a further arrangement with the Defendants Nos. 5, 6 and 7 vide an unregistered Partnership Deed dated 26.01.2008 to pool the 81 acres of the Firm with 82 acres of land of those Defendants for the purposes of development under a venture by the name of M/s. Unique Associates.

5. That as the land of the Firm and that of the Defendants Nos. 5 to 7 was said to have been scattered over various survey numbers, separate applications were apparently made to the Defendant No. 9, being the Malir Development Authority, for adjustment and consolidation, with 130-18-52.37 (Ac-Gh-Yds) out of 163-3 (Ac-Gh) then being consolidated and handed over on 22.10.2009, but the process for the residual land remained in abeyance.

6. That in February 2010 the Firm apparently sold 50 acres of land to M/s. Noman Properties, it being averred that whilst it had been represented by the Defendant No.2 that the sale was at a price of Rs. 250,000/- per acre, the actual consideration received by the Defendant No.2 was Rs.5,600,000/- acre, which, however, was not credited to the account of the Firm, hence the Plaintiff's share of Rs.70,488,000/- was allegedly not paid to him.
7. It is in this backdrop that the Suit has been filed, praying for judgment and decree in the following terms:
 - i. It may be declared that with effect from 07.05.2014 when suit for dissolution of partnership is filed, the Defendant No.1 stands dissolved and/or otherwise when the summons of the suit in question, have been received by them or otherwise as deemed fit in the circumstances of the case.
 - ii. It may be ordered that receiver may immediately be appointed to take over the property of the firm with full control and take accounts of the Defendant No.1 as to receipts and expenses and to do other acts necessary as the Plaintiff had undertaken as partner of the above said dissolved firm.
 - iii. To direct the Defendants Nos.1 to 3 to render true and proper account of Defendant No.1 from 14.11.2006 till its dissolution.
 - iv. Pass judgment and decree in favour of the Plaintiff and direct the Defendant No.2 to pay to the Plaintiff an amount of Rs.70,488,000/- (Rupees Seven Crore Four Lac, Eighty Eight Thousand) being 18% shareholding in the Defendant No.1 out of the amount of sale proceeds of 81 acres of land at the market price with 20% cost of funds till its realization and damages of Rs.500 Million.
 - v. Restrain the Defendant No.8 not to effect transfer, sale or mutation in respect of the firm's property, more specifically described in Paras 4, 5 and 9 of the Plaintiff in Sections 57 and 61 of Deh Nagan, Scheme 45, Taiser Town, Karachi against their undivided private survey land No.84, 98, 99, 101, 102, 103, 104, 106, 107, 108 and 111 in Deh Nagan.
 - vi. Direct the Defendant No.9 to hand over remaining land measuring 32-24-68.63 (Ac-Gh-Yds) to the Defendant No.1.

- vii. Grant permanent injunction, restraining the Defendants, their agents or attorneys, from disposing off, alienating or further encumbering the property of the Firm in any manner and/or creating any third party interest.
- viii. Cost of the Suit and any other relief which this Honourable Court may deem fit and proper and may be award.”

8. Learned counsel for the Plaintiff submitted that the transaction in respect of the 50 acres had neither been fair nor transparent, as a meager price had been shown in the Sale Deed whereas the real transactional value was far in excess thereof, as reflected by a decision rendered by arbitrators on 20.12.2013 in relation to a dispute between the Defendants Nos.2 and 4. It was averred that the resultant differential in the Plaintiffs share amounted to Rs.70,488,000/-, which had been usurped by the Defendant No.2. It was contended that in view of the Partnership Deed dated 26.01.2008 executed between the Firm and the Defendants Nos. 5 to 7, the entire 130-18-52.37 (Ac-Gh-Yds) of land constituted part of the entitlement of the Firm, and that the Defendants were liable under the circumstances to be restrained from alienating, encumbering or disposing of the 130-18-52.37 (Ac-Gh-Yds) pending final adjudication of the Suit. Particular emphasis was placed on Clauses 5 and 13 of the Partnership Deed dated 26.01.2008, with the former providing that the capital contribution of the Firm was of 81 acres of land whereas that of the Defendants Nos. 5 to 7 was of their 82 acres, and with the latter stipulating as follows:

“13. That no party shall be entitled to mortgage, transfer or dispose his/her share to any other outsider without prior written consent of the other parties, that no party shall do or cause to be done any acts, deeds, matter or things, which may be prejudicial to the interest of the partnership firm.”

9. Conversely, it was submitted by learned counsel for the Defendant No.2 that the Firm and Defendants Nos. 5 to 7 had entered into an unregistered Partnership under the name and style of M/s. Unique Associates to facilitate the process of consolidation of their respective lands by the Defendant No. 9, and that the subsequent sale by the Firm of the 50 acre part of its own land demonstrated that the parties did not consider M/s. Unique Associates as a formal partnership or treat the assets of the Firm and Defendants No.5 to 7 as collective assets. It was emphasised that the Plaintiff was himself a signatory to Lease Deed executed in favour of M/s. Noman Properties in relation to the 50 Acres.

10. It was emphasized that since its inception, the Firm had only held the specified 81 Acres of land in its name, and no case for injunction stood made out in respect of the 50 acre part thereof as had been sold to the Defendant No.4 or the land that otherwise belonged to the Defendants Nos. 5 to 7. In this regard it was pointed out that as the Suit was for dissolution of the Firm and not for the dissolution of M/s. Unique Associates, the prayer for injunction was even otherwise not in consonance with the final relief sought in terms of the Plaint. It was also pointed out that the cause of action was stated to have arisen in the year 2010 when the Lease Deed in respect of the 50 acres had been executed, however, the Suit had been filed in the year 2014, it being submitted that the interim injunction sought by the Plaintiff vide CMA No.6125/2014, being an equitable remedy, merited dismissal on this account alone.

11. It was also averred that the Plaintiff had not made any capital contribution towards the purchase of the 81 Acres by the Firm, but as he had been desirous of continuing his participation in its prospective business endeavours, he had requested the other partners of the Firm to reduce his shareholding so as to facilitate him in make the commensurate contribution, hence the Plaintiff and Defendants Nos.2 and 3 had revised the terms of their partnership by entering into another Partnership Deed dated 03.03.2009 whereby the Plaintiff's shareholding was decreased from 18% to 12%, and that the Lease Deed executed in favour of M/s. Noman Properties in relation to the 50 Acres itself specifically mentioned that the Plaintiff was a 12% shareholder in the Firm. It was submitted that to date, the Plaintiff had not even made the requisite capital contribution to such reduced extent, hence could not claim any interest in the assets of the Firm or a share upon its dissolution. However, it was conceded that a proper determination in that regard could only be made on the basis of evidence and that for the purpose of CMA No. 6125/2014, the interim order could be confirmed to the extent of the remaining 31 acres of land of the Firm.

12. Learned counsel for the Defendants Nos. 5 to 7 emphasised that no steps had ever been taken to register the Partnership Deed dated 26.01.2008 and the land which the respective parties had agreed to pool together was never transferred to M/s. Unique Associates and remained in their individual names. It was also emphasised with reference to Clause 13 of the Partnership Deed that in February 2010, the Defendant No.1 had sold the 50 Acres of its land to the Defendant No.4 without taking consent or even consulting the Defendants Nos. 5 to 7, thus signalling the intent to repudiate and abandon the envisaged arrangement before it could be given effect.

13. In rebuttal, counsel for the Plaintiff reiterated that the Plaintiff had an 18% share in the Firm and submitted that the Partnership Deed dated 03.03.2009 relating to the reduction of such share to 12% was a forged and fabricated document. However, no explanation was forthcoming as how and why the Sale Deed that the Plaintiff had admittedly executed reflected the reduced shareholding.

14. Having considered the arguments advanced at the bar, it merits consideration that vide the Application under reference, the Plaintiff has sought to restrain the “Defendants from alienating, encumbering or disposing of the vacant compact land of the Firm measuring 130-18-52.37 (Acres-Ghuntas-Square Yards) out of 163-03 (Acres-Ghuntas)...” and when such prayer is examined in the context of the final relief sought in terms of the Plaint, it is apparent that the same are not in consonance, for whereas the Suit is for dissolution of the Firm (i.e. M/s. ARD Associates), the Application for interim relief extends beyond the 81 Acres that were its property so as to address the land of the Defendants Nos. 5 to 7 on the basis of the Partnership Deed relating to M/s. Unique Associates. Other than Clause 13, there is no provision in the Partnership Deed in respect of M/s. Unique Associates serving to fetter the rights of the parties to deal in their land, which remained vested with them, as demonstrated through the very insertion of a provision in the nature of that clause. As the Plaintiff admittedly executed the Sale Deed in respect of 50 Acres of the Firm’s land in favour of M/s. Noman Properties, notwithstanding Clause 13, he cannot then in equity and good conscience invoke that same clause for claiming an injunction against the Defendants Nos. 5 to 7 in relation to their land, which was distinct from that of the Firm. Even otherwise, in light of

the prayer made in the plaint for declaration as to dissolution of the Firm, the arrangement entered into by the Firm with the Defendants Nos. 5 to 7 in relation to M/s. Unique Associates cannot even otherwise be pressed into service.

15. Furthermore, being party to the transaction in respect of the Firm's 50 acres in favour of M/s. Noman Properties, the Plaintiff cannot then seek to restrain further transaction in respect thereof on the basis of his claim that he did not receive his full share of the true value of the transaction, as at best his right would be that of recovering the shortfall from the Defendant No.2, being the party who is alleged to have diverted/withheld the share, subject of course to such claim being proven.

16. As such, the Plaintiff has not been able to establish a prima face case for injunction other than in respect of the remaining 31 acres of the Firm, as has in any event been conceded to by counsel appearing on behalf of the Defendant No.2. CMA No. 6125/2014 is accordingly allowed to that extent, and the Defendants Nos. 1 to 3 are restrained from alienating, encumbering or disposing of such 31 acres during the pendency of the Suit.

17. As for CMA Number 7924/18, the Plaintiff has filed the said Application alleging that the Defendants Nos. 5 to 7 had violated the Order dated 08.05.2014 made on CMA Number 6125/2014 by starting construction activities upon the suit property. In this regard, it is pertinent to observe that on that date an ad-interim order had been made as prayed, the prayer was only that "*... the defendants be restrained from alienating, encumbering or disposing of the vacant compact land of the firm...*".

However, the only material submitted in support of CMA Number 7924/18 were certain photographs, which were said to show the presence of heavy machinery and ongoing construction, but when viewed did not show any such activity. Even otherwise, as the point of construction had not been not the subject of CMA Number 6125/2014 or Order dated 08.05.2014, such claim does not serve to advance the purpose of CMA Number 7924/18. No material was placed on record to indicate that the Defendants Nos. 5 to 7 have alienated, encumbered or disposed of their land. As such, CMA Number 7924/18 appears to be misconceived, hence stands dismissed.

18. Turning to CMA Number 15418/2018 filed on behalf of the Defendants Nos. 5 to 7 under Order 1, Rule 10(2) CPC, seeking that they be struck-off from the proceedings, it merits consideration that of the main prayers, it is only Prayer Clause (v) that relates to the land of the Defendants Nos. 5 to 7, by seeking to restrain the transfer of the property described in Paragraphs 4, 5 and 9 of the Plaint. Whilst Paragraphs 4 and 5 of the Plaint refer to the 32-24-72 (Acres-Ghuntas-Square Yards) and 48-15-49 (Acres-Ghuntas-Square Yards) acquired by the Firm and forming part of its 81 Acres, Paragraph 9 extends to 130-18-52.37 (Acres-Ghuntas-Square Yards), thus encompassing the land of the Defendants Nos. 5 to 7, which is not the land of the Firm and was merely made available for purpose of the venture envisaged in the form of M/s. Unique Associates, but which, as observed herein above, has been frustrated by the actions of the Plaintiff. Furthermore, no declaration or other substantive relief has been sought in relation to such land in terms of the preceding prayers, which all relate to the Firm (i.e. the Defendant No.1) and there is no substratum to support the prayer disparately made in terms of Prayer Clause (v) extending beyond the scope of the property of the Defendant No.1. Even

Paragraph 25 of the Complaint, which sets out the cause of action, is bereft of any reference to M/s. Unique Associates, the Defendants Nos. 5 to 7 or their 82 acres of land. In this context, it appears that the Defendants Nos. 5 to 7 have been unnecessarily arrayed as defendants and are neither necessary nor proper parties to the Suit, which otherwise pertains to matters relating to the Firm and the right and obligations of those parties as are its partners. Hence, CMA Number 15418/2018 is allowed, with the Defendants Nos. 5 to 7 being struck-off accordingly.

JUDGE

Karachi
Dated _____